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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Implementation of Sections 3(n) )  
and 332 of the Communications Act )  
 )  
Regulatory Treatment of )  
Mobile Services )

GN Docket No. 93-252

REPLY COMMENTS OF AERONAUTICAL RADIO, INC.

Aeronautical Radio, Inc. ("ARINC"), by its attorneys, hereby submits its reply to comments on the Notice of Proposed Rule Making in the above captioned proceeding.<sup>1</sup> The record overwhelmingly confirms ARINC's initial showing that its shared aviation and land mobile radio services should retain their private system classification under the new rules to be promulgated in this docket.

In its opening comments, ARINC established that the Commission is correct in its tentative conclusion that aviation services under Part 87 of the Rules should be included in the category of "private mobile services" because they do not meet the statutory criteria for commercial mobile services ("CMS"). Specifically, the Part 87 radio services offered by ARINC are not provided for profit and are not available to the public. Only one commenter, Arch Communications Group, Inc., asserts that "commercial" aviation services regulated under Part 87 should be treated

<sup>1</sup> Notice of Proposed Rulemaking, GN Docket No. 93-252 (released Oct. 8, 1993).

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as commercial mobile services.<sup>2</sup> However, it is unclear what basis Arch has for reaching such a conclusion or even what Arch means by a "commercial" Part 87 service. Indeed, Arch concedes that the "for profit" element of the CMS definition should be based upon whether a service as a whole is offered on a commercial basis,<sup>3</sup> and that is clearly not the case for the aviation radio services provided by ARINC.<sup>4</sup>

Moreover, in defining public availability for purposes of the CMS classification, Arch urges the Commission to "consider all for-hire services to be available to a substantial segment of the public so long as there are no restrictions in the rules preventing them from being offered to the public at large."<sup>5</sup> As ARINC explained in its Comments, however, the Part 87 rules and their safety-oriented nature prevent ARINC from offering its services to the public at large.<sup>6</sup> Thus, under Arch's own proposed application of the CMS definition, aviation services provided under Part 87 should be excluded from that classification. The Commission should, therefore, affirm its tentative

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<sup>2</sup> Arch Comments at 9.

<sup>3</sup> Id. at 4.

<sup>4</sup> ARINC at 5.

<sup>5</sup> Arch at 5.

<sup>6</sup> ARINC at 5.

conclusion that Part 87 services continue to be properly classified as private.

The record further supports ARINC's demonstration that non-profit, Part 90 systems merit private user status. As a not-for-profit corporation, ARINC is merely a cost-sharing center for its owners to provide services necessary to the conduct of their business. These services are offered to a limited group for their internal use. Thus, although several parties assert that shared systems employing a for-profit system manager should be treated as "for-profit" users,<sup>7</sup> even they do not contend that sharing arrangements where neither a manager nor any licensee earns a return fall within the definition of "for-profit." The lack of dispute on this issue suggests a broad consensus that true shared systems, in which cost is divided among all the users, do not fall within the statutory definition of "for-profit."

Accordingly, the Commission's proposals to classify as private both aviation services provided pursuant to Part 87 of the Rules and ARINC's non-commercial shared private land


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<sup>7</sup> See, e.g., Sprint at 5; The Bell Atlantic Companies at 7; Pacific Bell and Nevada Bell at 4; DC Public Service Commission at 4.

mobile operations under Part 90 of the Rules should be adopted in its final rules in this proceeding.

Respectfully submitted,  
AERONAUTICAL RADIO, INC.

By

  
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November 23, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 1993, I caused copies of the foregoing "Reply Comments of Aeronautical Radio, Inc." to be mailed via first-class postage prepaid mail to the following:

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